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11
12 **UNITED STATES DISTRICT COURT**
13
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 EXXON MOBIL CORPORATION,

16 Petitioner and
17 Plaintiff,

18 v.

19 SANTA BARBARA COUNTY
20 BOARD OF SUPERVISORS,

21 Respondent and
Defendant.

22 and

23 ENVIRONMENTAL DEFENSE
CENTER, GET OIL OUT!,
24 SANTA BARBARA COUNTY
ACTION NETWORK, SIERRA
CLUB, SURFRIDER FOUNDATION,
25 CENTER FOR BIOLOGICAL
DIVERSITY, and WISHTOYO
FOUNDATION,

26
27 Intervenors.
28

Case No. 2:22-cv-03225-DMG (MRWx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITIONER/PLAINTIFF EXXON
MOBIL CORPORATION'S CROSS-
MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION
TO RESPONDENT/DEFENDANT'S
AND INTERVENORS' MOTIONS
FOR SUMMARY JUDGMENT ON
FIRST CAUSE OF ACTION FOR
WRIT OF ADMINISTRATIVE
MANDATE**

Judge: Hon. Dolly M. Gee
Hearing: June 16, 2023
Time: 2:00 p.m.
Courtroom: 8C

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INTRODUCTION

For over three decades, ExxonMobil’s Santa Ynez Unit (“SYU”) brought local, low-carbon oil to California, quality jobs to the citizens of Santa Barbara, and millions of dollars in annual tax revenues to the County. Consistent with local regulations, SYU’s oil was transported to refineries through two pipelines—formerly owned by Plains Pipeline, L.P. (“Plains”). In May 2015, one of those pipelines ruptured, and Plains shut down both. Permit applications to replace the pipelines or add safety valves to the existing pipelines are pending. In the meantime, SYU has been shut in and cannot restart without a means to transport its oil to the market.

There is a ready answer to this dilemma: temporarily trucking SYU’s oil for up to seven years or until a pipeline becomes available, whichever period is shortest. This solution is contemplated by Santa Barbara’s own Land Use Plan—which states that “[t]he County *should assure* that producers have access to competitive markets”—and codified in local laws that allow for other forms of oil transportation until a pipeline is available and if all environmental impacts are mitigated to the “*maximum extent feasible*.” ExxonMobil’s temporary trucking permit application (the “Project”) met these and all other applicable criteria required by local law.

Nevertheless, the Board of Supervisors voted 3-2 to deny the Project, forcing SYU’s facilities to remain shuttered indefinitely. The Board did so under manufactured pretenses divorced from the specific Project application and against the advice of the County’s own Planning & Development Staff (“Staff”), who spent years analyzing all of the potential risks and benefits of allowing ExxonMobil to transport oil by truck and thus to reopen SYU.

Based on its extensive review of the record—which included the accident data and other evidence on which the Board should have ultimately relied—Staff concluded that the Project complied with the County’s Land Use and Development

1 Code (“LUDC”) and Coastal Zoning Ordinance (“CZO”). Specifically, Staff found
2 that the Project cumulatively added *just nine trucks per day* to County roads and
3 highways. All the Project’s potential environmental impacts, except one, were
4 “*less than significant*” with the proposed mitigation measures in place. And the
5 odds of the one significant impact—an accident resulting in an oil spill—were
6 vanishingly small, amounting to risking a single five-gallon-or-more release in the
7 course of *17 years*.

8 The Board ignored thousands of pages of evidence and analysis from Staff
9 and state agencies, which supported Staff’s findings that the Project met all the
10 necessary requirements. It also refused to acknowledge the clear benefits of
11 replacing foreign-produced crude with cleaner domestic oil, and thumbed its nose at
12 the return of hundreds of local jobs and millions of dollars in lost taxes. Instead of
13 approving the Project, as County Staff recommended, the Board rejected it—and in
14 doing so, openly admitted its animus toward trucking, the oil industry in general,
15 and ExxonMobil in particular.

16 The Court cannot let this decision stand. Through its denial, the Board
17 committed a prejudicial abuse of discretion in three ways. *First*, the denial
18 effectively revokes ExxonMobil’s undisputed, fundamental vested right to restart
19 and operate SYU. The Board has made that right meaningless by preventing
20 ExxonMobil from transporting oil out of the facility. *Second*, the Board abused its
21 discretion by disregarding the overwhelming evidence that the Project should be
22 approved. *Finally*, the Board failed to proceed in the manner required by law,
23 setting aside County laws that authorize oil transportation by means other than
24 pipeline and imposing its own piecemeal *de facto* ban on trucking crude oil, not
25 only in the County but also to the region and beyond.

26 ExxonMobil respectfully requests that the Court grant summary judgment on
27 its First Cause of Action for Writ of Administrative Mandate, setting aside the
28 Board’s denial of the Project and ordering the Board to reconsider the Project

1 consistent with the Court’s opinion.

2 **STATEMENT OF FACTS**

3 **A. ExxonMobil’s Santa Ynez Unit Has Operated Safely and Complied with**
Strict Environmental Regulations for More Than 30 Years.

5 ExxonMobil owns and operates SYU, an oil-production facility consisting of
6 three offshore platforms called Hondo, Harmony, and Heritage and an onshore
7 processing center located in Las Flores Canyon (“LFC”) that processes the crude oil
8 produced by the platforms. 37-AR-014848, 014850. The platforms are located on
9 submerged lands leased for decades from the United States in federal waters off the
10 coast of Santa Barbara County. SYU operates pursuant to the September 1986
11 County Development Plan (87-DP-32cz) (the “Development Plan”). 37-AR-
12 014848.

13 SYU has a long history of environmental compliance and safety.
14 ExxonMobil built LFC and started transporting SYU’s oil to third-party refineries
15 via pipeline to address the concerns of the County and the environmental
16 community.¹ 37-AR-014850. SYU produced nearly 600 million barrels of oil over
17 thirty years without incident and received 14 federal safety awards. 1-AR-000146.
18 When fully operational, SYU employed hundreds of workers and paid millions of
19 dollars in taxes to the County. 37-AR-014639.

20 Between 1993 and 2015, oil processed at LFC was transported to refineries
21 through a pipeline system, consisting of Lines 901 and 903, which was then owned
22 and operated by Plains.² 37-AR-014580. On May 19, 2015, Line 901 ruptured—

23 ¹ Prior to the construction of LFC, ExxonMobil transported SYU’s crude oil from
24 its offshore platforms via marine tankers. As required by the Development Plan,
25 ExxonMobil decommissioned its then-existing offshore storage and treatment
26 vessels previously used to load oil onto the tankers, stopped its marine tankering
27 operations, and switched to transportation via pipeline. 37-AR-014679, 014850.
With no pipeline available and the Board refusing to adhere to County policy and
local laws authorizing alternative means of transportation, ExxonMobil has no
current ability to produce from the wells.

28 ² On March 13, 2023, the Planning and Development Director approved the permit
transferring ownership of Lines 901 and 903 (now called the Las Flores Pipeline
System) from Plains to Pacific Pipeline Company (“PPC”), a wholly owned

1 through no fault of ExxonMobil—and Plains shut down both pipelines. *Id.*
2 ExxonMobil shut down SYU production in June 2015 and implemented
3 preservation plans for the facilities. 37-AR-014581. In February 2016,
4 ExxonMobil received an emergency permit allowing the company to de-inventory
5 approximately 400,000 barrels of crude oil via approximately 2,500 trucks. *Id.*; 60-
6 AR-026412; 65-AR-029887. The trips—totaling over 350,000 miles—were safely
7 completed without incident. 60-AR-0264120.

8 In August 2017, Plains submitted an application to replace Lines 901 and
9 903. 37-AR-014582. Nearly six years later, the application is still being processed
10 by the County. *Id.* If approved, a replacement pipeline would take four to seven
11 years to complete. *Id.* In December 2021, Plains submitted a separate
12 application—now being pursued by PPC—seeking to install 16 new safety valves
13 on Lines 901 and 903. That application, if approved, would ensure compliance
14 with Assembly Bill 864 (2015), which requires that operators install the best
15 available technology on existing pipelines in the Coastal Zone to reduce the volume
16 of potential release. The replacement pipeline application is still in the midst of the
17 environmental impact review process, and the valve application has received
18 opposition from anti-oil advocates.

19 Since the SYU shut-in, ExxonMobil has continued to maintain, inspect, and
20 monitor the SYU platforms and facilities to ensure their integrity. 37-AR-014581.
21 Each year, the company spends tens of millions of dollars to maintain the facilities
22 and pays the County more than \$1 million in taxes. 37-AR-014639. And, while
23 ExxonMobil has the undisputed right to restart production at SYU at any time (37-
24 AR-014573, 014810), the exercise of that right is illusory so long as ExxonMobil
25 has no way to transport the oil from LFC to market.

26

27

28 subsidiary of Mobil Pacific Pipeline Company, which is a subsidiary of
ExxonMobil. Various groups have appealed the Director's transfer approval.

1 **B. SYU’s Development Plan and Long-Standing County Policy Recognize**
2 **That ExxonMobil Must Have Market Access.**

3 Both the Development Plan and County policy recognize ExxonMobil’s right
4 to use other means to transport its oil if a pipeline is not available. Under the
5 Development Plan, SYU’s oil “shall be transported from the facility and the County
6 by pipeline in a manner consistent with Santa Barbara Local Coastal Plan Policy 6-
7 8.” 37-AR-014821. Subsection (d) of that policy states, “[u]ntil pipelines become
8 available...other modes of oil transportation are allowed.” RJD Ex. A at 70. The
9 Development Plan *also* provides that “[t]ransportation by a mode other than
10 pipeline may be permitted only in accordance with [CZO] Section 35-154.5(i)...”
11 37-AR-014821–22. Like Subsection (d), this CZO Section authorizes oil
12 transportation, by a means other than a pipeline, if no pipeline is available.³ RJD
13 Ex. B at 9-6–7. Indeed, since 1984, the Coastal Land Use Plan has provided that:

14 **Oil transportation is one of the key issues associated with oil**
15 **development in Santa Barbara County . . . The County *should***
16 **assure that producers have access to competitive markets,**
17 however, the County need not provide unlimited flexibility to all
18 producers. **Since pipelines are not yet in place and may not be**
19 **constructed to all refining centers, other methods of oil**
20 **transportation are needed** for production that precedes pipeline
21 construction and operation and **for refining centers not served by**
22 **pipeline.**

23 RJD Ex. A at 66–67 (emphasis added).

24 Consistent with Santa Barbara’s plan, policy, and local law—because a
25 pipeline was not available—on September 22, 2017, ExxonMobil applied to the
26 County to allow for temporary trucking from LFC to local refining facilities. 37-
27 AR-014567.⁴ This phased plan was designed to ensure a safe and environmentally

28

³ LUDC Section 35.52.060.B.10.b includes similar provisions permitting oil to be
29 transported by means other than pipeline. RJD Ex. C at 5-13.

30

⁴ Documents within the administrative record refer to the initial application as the
31 “Proposed Project.” In August of 2020, Phillips 66 announced that it would close
32 SMPS in 2023. Accordingly, the Project was revised to reduce production from
33 11,000 to 10,880 barrels per day. 37-AR-014855–57. The Project underwent other
34 modifications, including the addition of numerous mitigation measures, discussed
35 herein. The Board considered this “Modified Project.”

1 responsible restart to SYU operations, restoring hundreds of jobs to the County and
2 locally produced oil to California. 37-AR-014807.

3 Under the Project, experienced drivers—subject to strict protocols and using
4 trucks equipped with up-to-date safety systems—would transport approximately
5 11,000 barrels of crude oil each day from LFC to either the Phillips 66 Santa Maria
6 Pump Station (“SMPS”), located outside the City of Santa Maria, or to the Pentland
7 Terminal (“Pentland”), located in Kern County. 37-AR-014737, 014742, 014823,
8 014841. This volume equates to a little over one-third (39%) of the oil production
9 rate of SYU prior to its shut-in. 37-AR-014579, 014639, 014765, 014805.
10 Transportation would occur seven days a week; no more than 70 trucks within a 24-
11 hour period would commute between SYU and the designated refinery. 37-AR-
12 014805. The Project would continue for up to seven years, or until a pipeline
13 became available, whichever is shorter. 37-AR-014802.

14 **C. The Record Contains All the Evidence and Findings Necessary to
15 Approve the Project.**

16 The County prepared a Supplemental Environmental Impact Report (“SEIR”)
17 under the California Environmental Quality Act (“CEQA”) as part of the permitting
18 process.⁵ 37-AR-014804. The Revised Final SEIR,⁶ released in August 2021
19 (“Final SEIR”), consisted of three separate volumes—containing more than 3,000
20 pages—that evaluated every relevant aspect of the Project, including its objectives,
21 ten possible alternatives, related environmental impacts, and mitigation measures to
22 address those impacts. 37-AR-014787, 014846–47; 41-AR-017851. On September
23 8, 2021, Staff released a report (the “Staff Report”) recommending approval of the

24
25

⁵ An SEIR enables responsible agencies to review and evaluate detailed information
26 about a project’s environmental effects, ways to minimize the significant
environmental effects, and reasonable alternatives to the project. 37-AR-014802.

27

⁶ Two SEIRs were prepared related to ExxonMobil’s trucking application. The first
28 was completed in July 2020. Staff prepared a revised SEIR to address changes
resulting from the closure of SMPS during the lifetime of the Project, requiring that
all oil subsequently be transported to Pentland. 37-AR-014845–46.

1 Project as modified by the combination of two project alternatives and proposed
2 implementation of the various mitigation measures discussed in the Final SEIR.
3 37-AR-014567–69. With these modifications, Staff determined that each of the
4 findings necessary for approval were satisfied.

5 **Mitigation of Unavoidable Impacts to the Maximum Extent Feasible (37-
6 AR-014630–33):** The Final SEIR identified *only one* unavoidable Class I impact:
7 the risk of an accidental oil spill from trucking. 37-AR-014812. Staff
8 recommended, and ExxonMobil accepted, multiple robust mitigation measures
9 identified in the Final SEIR that would reduce the likelihood of a truck accident on
10 the proposed routes by 33%. 38-AR-015032. The mitigation measures included,
11 among other things:

- 12 • Implementing a plan on truck operation safety to minimize the potential
13 of an accident and spill;
- 14 • Updating the existing SYU prevention and emergency response plans;
- 15 • Ensuring that all third-party trucking companies would be financially
16 responsible for the costs of a cleanup should a spill occur;
- 17 • Ensuring each trucking company had an oil spill contingency plan; and
- 18 • Funding the County Fire Department’s purchase of equipment for use in
19 the event of a spill. 38-AR-015028–32.

20 With those and other proposed mitigation measures in place, Staff projected
21 the likelihood of an accident resulting in an oil spill to be *one in every 52 years* for
22 trucks traveling to SMPS and *one in every 17 years* for those going to Pentland.
23 38-AR-015022. While the risk of an accident and spill would still exist, Staff found
24 that these measures mitigated the risk to the “maximum extent feasible.” 37-AR-
25 014588.

26 **Mitigation of All Other Impacts to the Point of Insignificance (37-AR-
27 014633–35):** The Final SEIR identified a number of Class II significant
28 environmental impacts, including traffic and circulation. 37-AR-014586–87. To

1 address those concerns, Staff considered two mitigation measures: (1) prohibiting
2 truck travel during peak morning and evening hours and (2) preventing trucks from
3 travelling on particular roadways during school bussing hours and restricting the
4 speed limit for trucks driving on those roadways. 38-AR-015106, 015113.
5 Implementation of these mitigation measures reduced the risk to “less than
6 significant.” 37-AR-014586.⁷

7 **Project Alternatives and Mitigation Measures Not Feasible (37-AR-
8 014635–36):** Staff considered ten Project alternatives but ultimately determined
9 that only two met the objectives of the Project and were environmentally superior to
10 the others. In its Report, Staff proposed adoption of a “No Trucking During Rainy
11 Periods” alternative, which was aimed at reducing the probability of a trucking
12 accident and the severity of an oil spill. Staff also recommended adopting a
13 “Trucking to SMPS Only” alternative that would require ExxonMobil to send
14 trucks exclusively to SMPS while it was still operating, and then to transition
15 trucking to Pentland only after SMPS was shut down. 37-AR-014571. Doing so
16 was expected to reduce the likelihood of an accident and spill due to the shorter
17 routes being travelled.

18 **Statement of Overriding Considerations (37-AR-014636–40):** Because a
19 Class I risk was identified for the Project, Staff prepared a Statement of Overriding
20 Considerations for the Board to adopt. 37-AR-014584. The statement identified a
21 number of benefits related to the Project, including: (1) returning locally produced
22 and supplied oil with lower carbon intensity; (2) restoring local jobs and
23 expenditures at local businesses; and (3) increasing County revenues through taxes
24 and mitigation funding. 37-AR-014636–40. Staff determined that these benefits
25 outweighed the risk that an oil spill would occur, warranting approval of the
26 Project. 37-AR-014636.

27 ⁷ The Project’s various mitigation measures also reduced the other Class II
28 impacts—including air quality and greenhouse gases—to “less than significant.”
37-AR-014813–14.

1 **Compliance with LUDC Section 35.82.080.E.1 and CZO Section 35-**

2 **174.7.1 (37-AR-014640-48):** These sections provide identical required findings
3 that must be made for the initial approval or modification of a development plan.
4 Staff found that the Project met them all. 37-AR-014640-48.

- 5 • ***The Project site is adequate.*** Facilities at LFC, SMPS, and Pentland
6 could accommodate the Project and containment structures were in place
7 to address any spills at those locations. 37-AR-014595-615, 014852-61.
- 8 • ***The Project mitigates all adverse impacts to the maximum extent
9 feasible.*** As discussed above, the Project's mitigation measures reduced
10 the risk of oil spills to the maximum extent feasible and all other impacts
11 were less than significant. 37-AR-014584-88, 014823-40.
- 12 • ***The streets and highways are adequate for the Project.*** Cumulatively,
13 the Project would add only nine trucks per day to existing traffic.
14 Mitigation measures prohibited transport during peak traffic hours. The
15 impact on traffic would be less than significant. No improvements to the
16 streets or highways was required. 37-AR-014641-42, 014645-46; 38-
17 AR-015090-126.
- 18 • ***Public services are adequate for the Project.*** Existing fire protection
19 equipment at LFC and practices along with County fire protection
20 services were adequate for the project. And no additional public services
21 would be required. 37-AR-014642, 014646; 38-AR-015197.
- 22 • ***The Project will not be detrimental to the general welfare, health, or
23 safety of the impacted neighborhoods and surrounding areas.*** Impacts
24 on air quality would be below County thresholds. The Project included
25 numerous mitigation measures designed to significantly reduce the impact
26 on traffic and the risk of accidents. Indeed, the risk of accidents resulting
27 in fatalities and injuries was within acceptable thresholds for the County.
28 37-AR-014642-43, 014646-47.

- 1 • ***The Project complies with all applicable requirements of the County's***
2 ***Development Code and Comprehensive Plan.*** The Project conformed
3 with the County's Comprehensive Plan, applicable Coastal Land Use Plan
4 policies and standards, and zoning ordinances. 37-AR-014643, 014647;
5 38-AR-015060-85.
- 6 • ***The Project is compatible with designated rural areas.*** The Final SEIR
7 did not identify any land use or aesthetic impacts from the Project. 37-
8 AR-014643-44, 014647-48.
- 9 • ***There are no conflicts with easements or public use.*** There are no public
10 easements on or through LFC and public access to local roads and
11 highways would not be affected. 37-AR-014644, 014648.

12 **The Use of a Pipeline to Transport Crude Oil Is Not Feasible under**
13 **LUDC Section 35.52.060.B.10.b and CZO Section 35-154.5(i) (37-AR-014648-
14 51):** The LUDC and CZO both contain provisions contemplating that crude oil
15 may be transported by a means other than pipeline if, *inter alia*, there is no pipeline
16 available and environmental impacts are “mitigated to the maximum extent
17 feasible.” RJN Exs. B-C. Staff determined that SYU lacks access to a pipeline and
18 the Project met the mitigation standard. It likewise found that the Project met these
19 regulations’ other required criteria. 37-AR-014619-21, 014624-27.

20 **D. The Board of Supervisors Disregarded the Evidence in the Record
21 Supporting the Project’s Approval.**

22 Following the completion and publication of the Staff Report, the Planning
23 Commission held a public hearing on the Project on September 29, 2021, during
24 which proponents and opponents of the Project provided comments and opinion.
25 60-AR-026388. The Planning Commission then continued the hearing to
26 November 3, 2021 and instructed Staff to return with recommended Findings for
27 Denial. 60-AR-026385-86; 37-AR-14779-84. At the continued hearing in
28 November, the Planning Commission voted 3-2 to recommend that the Board deny

1 the Project. 60-AR-026364-65, 026369.

2 On March 8, 2022, the Board held a public hearing on the Project. The
3 Board's responsibility was to determine whether it could make the necessary
4 findings to support approval of the Project. In light of County's mandate to provide
5 oil producers with access to the market and based on the information in the Final
6 SEIR and Staff Report, Project approval was the only reasonable conclusion. But
7 the Board generally ignored local law and Staff's well-developed and studied
8 findings.

9 Comments from the Board members who voted against the Project show that
10 they were not making a determination on this specific permit but instead were using
11 it as a vehicle to legislate the future of the oil industry in Santa Barbara County:

12 ***Vice Chair Das Williams:***

13 **I've spent most of my life as a foot soldier for the local
14 environmental movement, I'll say that it took decades of
negotiation, fighting, public hearings to get to the point where most of
15 the oil in the County was -- most of the volume was pipelined....**

16 **I find it sad that through the negligence of another oil company
that that balance or that sort of piece was ruptured and now we fight
17 over the future after that pipeline rupture.**

18 **I hope for the day that, the industry transforms enough to bridge the
gap...I hope there's solar panels at Las Flores Canyon, and I hope
19 for the day when ExxonMobil is making money in renewable
energy in our community. But the day isn't today. 1-AR-000158-60.**

20 ***Supervisor Gregg Hart:***

21 **We must reduce our dependence on fossil fuels to achieve true
22 energy independence. Our County and the world have faced oil
shocks in the past. The OPEC oil embargo in the '70s, the Iranian
23 Revolution, the Iran-Iraq War. The policy mistake we made each
time oil supplies were interrupted by events was not taking
24 advantage of those crises to advance renewable energy supplies.**

25 **We can't make this mistake again... While our decision today is
limited in scope to the temporary trucking program that would allow
the Santa Ynez Unit to restart operations before the reconstruction of
26 the pipeline, I believe that our community wants to send a clear
message that we are unwilling to risk damage to our environment
in exchange for short term corporate profits, uncertain local jobs,
27 and modest tax revenue. 1-AR-000170-71.**

1 ***Chair Joan Hartmann:***

2 **We often talk about the transition to renewable energy and it's**
3 **always way out there, but once it starts happening, it starts**
4 **happening quickly.** One of my favorite images is of 1900 in New
5 York on Fifth Avenue where there's 50 horses and one car. Thirteen
6 years later in 1913, there's 40 cars and one horse-drawn carriage.
7 Once change starts, it can really happen quickly, and I believe that's
8 going to be the case with our transition to renewable energy.

9 So we can think about it in terms of just the trucking. I do believe,
10 however, that we need to think about this more broadly and we do
11 have discretion about the baseline. **The baseline in my view is**
12 **current conditions and the current conditions are that we are in a**
13 **climate crisis** and the GHGs from this, it could offset the trucking,
14 although only one-tenth of it would be local, but **the facility itself is**
15 **the largest greenhouse gas emitter in our County.**

16 **And then the burning of the fossil fuels itself, that is not mitigated**
17 **for either. So is this really the direction to go when we are facing a**
18 **climate crisis?** I just, for my way of thinking, that is just not the case.

19 1-AR-000182.

20 Following the hearing, the Board voted 3-2 to deny the Project (the "Denial") and
21 adopted the Findings for Denial Staff prepared at the direction of the Planning
22 Commission, with minor revisions. 1-AR-000010–13. The Board concluded that
23 the Project was exempt from environmental review under CEQA because the
24 Project was being denied and that even if it were to approve the Project, it could not
25 make the required Statement of Overriding Considerations under CEQA. 1-AR-
26 000010–11. It also concluded that it could not make the following administrative
27 findings: (1) that streets and highways will be/are adequate and properly designed
28 to carry the type and quantity of traffic generated by the proposed use; and (2) that
the Project will not be detrimental to the comfort, convenience, general welfare,
health, and safety of the neighborhood and will not be incompatible with the
surrounding area. 1-AR-000011–12. Those findings were not specific to the
Project—beyond that it would add trucks to the roads. Rather, the Board relied on
comments from public and anti-oil advocates—including the Intervenors—to
identify existing behavior of other drivers, accident rates, and past oil tanker
accidents to serve as the basis for its Denial. 1-AR-000012.

E. The Board’s Denial Substantially Affects ExxonMobil’s Fundamental Vested Right to Restart and Operate SYU.

ExxonMobil has a vested right to restart and operate SYU at any time without the County's permission. 37-AR-014573. ExxonMobil has spent decades and invested substantial resources creating, operating, and maintaining the facility. *See* 37-AR-014848–50. This includes not only the investments made to develop the offshore facilities but also the costs associated with obtaining the Development Plan, expanding SYU to incorporate LFC, and now maintaining the facilities while they remain shut-in. *See* 37-AR-014850–51. ExxonMobil did so in reliance on the fact that SYU would continue to operate and have access to the market, as contemplated by both the Development Plan and Santa Barbara policy and local law. 37-AR-014821–22; RJN Exs. A–C. ExxonMobil did not and could not expect that the Board—contrary to County policy and law—would use the Project as a means to legislate a ban on any future oil trucking projects.

The wells beneath the offshore platforms still maintain significant reserves that could provide a cleaner oil source for Californians. *See* 37-AR-014637-38; 66-AR-030668. Approval of the trucking project would enable ExxonMobil to start up its oil production and processing at 39% of its pre-closure baseline capacity. 37-AR-014579, 014639, 014765, 014805. The Board's Denial substantially affects ExxonMobil's right to restart and operate SYU because ExxonMobil currently has no way of transporting its oil to market.

LEGAL STANDARD

In a challenge to the final decision of a California administrative agency, the standard for review is “whether or not as a matter of law the evidence in the administrative record permitted the agency to make the decision it did.” *Occidental Eng’g Co. v. INS*, 753 F.2d 766, 769 (9th Cir. 1985). “Summary judgment is an appropriate mechanism for deciding the legal question of whether the agency could reasonably have found the facts as it did.” *Id.* at 770. A determination amounts to

1 an abuse of discretion and thus violates California law when: (1) the agency failed
2 to proceed in the manner required by law; (2) the decision is not supported by the
3 findings; or (3) the findings are not supported by the evidence. Cal. Civ. Proc.
4 Code § 1094.5(b).

5 “If an administrative decision substantially affects a fundamental vested
6 right, the trial court must exercise its independent judgment on the evidence and
7 find an abuse of discretion if the findings are not supported by the weight of the
8 evidence.” *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal.App.4th 1519, 1525
9 (1992). Whether the administrative decision “substantially affects a fundamental
10 vested right must be decided on a case-by-case basis.” *Id.* at 1526 (quoting *301*
11 *Ocean Ave. Corp. v. Santa Monica Rent Control Bd.*, 228 Cal.App.3d 1548, 1556
12 (1991)).⁸ As the California Supreme Court explained in *Bixby v. Pierno*:

13 **By carefully scrutinizing administrative decisions which
14 substantially affect vested, fundamental rights, the courts of
15 California have undertaken to protect such rights . . . from
16 untoward intrusions by the massive apparatus of government. If the
17 decision of an administrative agency will substantially affect such a
right, the trial court not only examines the administrative record
for errors of law but also exercises its independent judgment upon
the evidence disclosed in a limited trial de novo.**

18 4 Cal.3d 130, 143 (1971) (emphasis added) (footnotes omitted).

19 Where no fundamental vested right is implicated, abuse of discretion is
20 established if the findings are not supported by substantial evidence in light of the
21 whole record. Cal. Civ. Proc. Code § 1094.5(c). For evidence to be “substantial,”
22 it “must be of ponderable legal significance . . . reasonable in nature, credible, and
23 of solid value; it must actually be ‘substantial’ proof of the essentials which the law
24 requires in a particular case.” *Bank of Am. v. State Water Res. Control Bd.*, 42
25 Cal.App.3d 198, 213 (1974). “Substantial” refers to the quality, not the quantity, of

26 ⁸ The Board’s Motion cites and discusses *Topanga Ass’n for a Scenic Cnty. v. Cty.*
27 *of Los Angeles* and *Breneric Assocs. v. City of Del Mar* in connection with its
28 discussion of the independent judgment test. See Bd. Mot at 9. But, both of these cases analyze the facts under the substantial evidence standard. See *Topanga Ass’n*, 11 Cal.3d 506, 514 (1974); *Breneric*, 69 Cal.App.4th 166, 175 (1998).

1 the evidence. *Hope v. Cal. Youth Auth.*, 134 Cal.App.4th 577, 589 (2005). The
2 evidence is not viewed in isolation; the Court must consider both supporting and
3 contrary evidence to fairly estimate its worth. *Cty. of San Diego v. Assessment*
4 *Appeals Bd.* No. 2, 148 Cal.App.3d 548, 555 (1983).

5 ARGUMENT

6 I. **The Independent-Judgment Test Applies Because the Denial 7 Substantially Affects ExxonMobil’s Fundamental Vested Right to Restart and Operate SYU.**

8 So long as ExxonMobil cannot transport oil from SYU to market, that facility
9 is effectively useless and its rights are abrogated. Though the Board makes only
10 passing references to the independent-judgment standard and Intervenors all but
11 ignore it, this test applies because the Denial substantially affects Exxon’s
12 undisputed, fundamental vested right to restart and operate SYU. *See* Bd. Mot. at
13 10; *see also* 37-AR-014573. ExxonMobil operated SYU for over three decades,
14 performed substantial work, and made significant investments in the facility over
15 that time. *See* 37-AR-014848–51. The Denial effectively stripped ExxonMobil’s
16 vested rights for the foreseeable future and threatens SYU’s continued existence.

17 *Goat Hill Tavern*—the leading case prescribing independent-judgment
18 review in the land-use context—is instructive. 6 Cal.App.4th 1519. There, the City
19 of Costa Mesa refused to renew a temporary conditional use permit (“CUP”), with
20 the “avowed purpose and result” to shut the tavern down. *Id.* at 1528. The tavern
21 had operated continuously since 1955. *Id.* at 1522. The plaintiff purchased the
22 tavern in 1984 and spent approximately \$1.75 million refurbishing it. *Id.* at 1523.
23 He expanded the property to add a game room in 1988 and eventually received a
24 six-month CUP for that space. The city renewed the CUP twice, though the record
25 indicates that the owner was not always timely in seeking renewals. After the
26 tavern’s request for a third renewal was denied, the owner initiated suit seeking a
27 writ of administrative mandamus. *Id.* at 1525. The trial court—applying the
28 independent-judgment test—concluded that the city’s denial was erroneous and

1 granted the writ. *Id.* The Court of Appeal affirmed, finding that the plaintiff had
2 more than “a purely economic privilege,” as the city suggested, but instead had “*the*
3 *right to continue operating an established business* in which he has made a
4 *substantial investment.*” *Id.* at 1529 (emphasis added). The court found the City’s
5 decision to deny renewal of the CUP had the effect of destroying a business that
6 had “operated legally for 35 years,” an action that “implicate[d] a fundamental
7 vested right of the property owner.” *Id.* at 1531.

8 Similarly, the California Court of Appeal in *The Termo Co. v. Luther*, 169
9 Cal.App.4th 394 (2008), held that an administrative decision that threatened the
10 existence of an oil-drilling business affected the owner’s fundamental vested right
11 to continued operations. In *Termo*, the owner and operator of 28 idled oil wells was
12 ordered by the Director of Conservation to plug and abandon the wells. *Id.* at 407–
13 08. *Termo* filed a petition for administrative mandamus to set aside the order,
14 arguing the Director had acted beyond his jurisdiction and the order was
15 unreasonable and unsupported by the evidence. *Id.* at 401. The trial court,
16 applying the substantial-evidence test, denied the petition. *Id.* at 404. The Court of
17 Appeal reversed the decision, finding the independent-judgment standard instead
18 applied. *Id.* at 413. It considered how the order to plug and abandon the wells
19 “would have the effect not only of shutting down a business that has been in
20 existence for 20 years or more, but also of terminating the right to produce oil—an
21 extraordinarily valuable resource, especially in the current economic era.” *Id.* at
22 407. It concluded “that the right to extract oil is vested” and that the right was
23 “fundamental considering its potentially massive economic aspect and its
24 considerable effect in human terms.” *Id.* at 407–08.

25 Here, the Board and Intervenors erroneously assert that the substantial-
26 evidence standard applies. Bd. Mot. at 10–11; Intvs. Mot. at 10. While the
27 Intervenors merely presume that standard applies, the Board asserts three reasons to
28 apply it here: (1) that ExxonMobil’s permit—the Development Plan—and vested

1 rights do not include “transport[ation] of crude oil by truck”; (2) that Plains, not the
2 Board, interfered with ExxonMobil’s ability to produce oil; and (3) that any harm is
3 purely economic. Bd. Mot. at 10–11. These arguments fail in light of *Goat Hill*
4 *Tavern*, *Termo*, and the unique facts of this case.

5 Neither the existence of a permit to truck crude oil nor the initial cause of
6 SYU’s shut-in determines whether ExxonMobil’s undisputed, vested right to
7 operate and restart SYU has been affected or the applicable standard of review.
8 What matters is that—just as in *Goat Hill Tavern* and *Termo*—a government
9 entity’s decision has effectively prevented a long-standing business from
10 continuing to operate. *Goat Hill Tavern*, 6 Cal.App.4th at 1529–30; *Termo*, 169
11 Cal.App.4th at 408. In *Goat Hill Tavern*, the court applied the independent-
12 judgment test and reversed the denial of the renewal application even though the
13 tavern’s CUP had expired. 6 Cal.App.4th at 1529–30. And the *Termo* court’s
14 decision is even more telling. There, the 28 oil wells at issue had been idle for
15 years, and the Director argued that the owner had no vested right because “no
16 license or permit granting a right to operate the...oil wells has been issued.”
17 *Termo*, 169 Cal.App.4th at 408; compare with Intvs. Mot. at 17 n.8. The court
18 rejected that argument, applied the independent-judgement standard, and reversed
19 the order, finding:

20 [T]he Supervisor, through his regulatory authority, is eliminating the
21 right of the owners of the wells to bring them back on line, to operate
22 them, and to extract oil. **To argue that the issuance of a license or
23 permit per se is outcome determinative is to elevate form over
substance. We are talking about government permission of one
sort or another to carry on a business, and here, to produce oil.**

24 *Termo*, 169 Cal.App.4th at 408. The same is true here. The Board and Intervenors
25 do not and cannot reasonably dispute that the Denial substantially affects
26 ExxonMobil’s ability to restart and operate SYU.

27 While ExxonMobil retains the right to drill for oil, that right means nothing if
28 ExxonMobil cannot transport that oil to refineries for processing and distribution to

1 the market for sale. To state the obvious, selling oil is the purpose of drilling
2 operations. And SYU has finite storage capacity, so the facility cannot operate if
3 the oil it collects has nowhere to go. The Denial prevents SYU from transporting
4 oil to market because there is no pipeline currently available and no certainty that
5 the Board will ever approve one. 37-AR-014648-49.⁹

6 The Court should find that ExxonMobil's undisputed, fundamental vested
7 right to operate SYU is substantially affected by the Board's Denial and should
8 apply the independent-judgment test in its review of that decision.

9 **II. The Weight of the Evidence Compels Approval of the Project.**

10 The Board did not deny the Project because the Project failed to address
11 environmental concerns or comply with state and local laws—the Project did all of
12 those things. Rather, the record shows the Board's Denial was an arbitrary,
13 politically motivated decision that did not take into account the ample evidence
14 supporting approval presented by Staff. The independent-judgment standard
15 protects vested rights against exactly this kind of capricious decision:

16 **Legislative agencies**, with varying qualifications, **work in a field**
17 **peculiarly exposed to political demands**. Some may be expert and
18 impartial, others subservient. It is not difficult for them to observe the
19 requirements of law in giving a hearing and receiving evidence. But **to**
20 **say that their findings of fact may be made conclusive where**
21 **constitutional rights** or liberty and **property** are involved, although
22 **the evidence clearly establishes that the findings are wrong and**
23 **constitutional rights have been invaded, is to place those rights at the**
24 **mercy of administrative officials and seriously to impair the**
25 **security inherent in our judicial safeguards**. That prospect, with our
26 multiplication of administrative agencies, is not one to be lightly
27 regarded.

28

⁹ There are no other methods—besides trucking—for ExxonMobil to transport its oil. The Final SEIR, which includes an analysis of Project alternatives, rejected the possibility of alternative modes of SYU crude oil transport. In considering transport via marine barge, County Staff determined that the use of a marine barge “would increase the likelihood of a spill impacting the marine environment” and “[a]s such, risk of upset impacts would be substantially greater for marine transport than the proposed Project.” 37-AR-014870-71. County Staff also dismissed transport via railway because this alternative required building a rail spur to allow loading of tank cars with oil, for which there was insufficient space. 37-AR-014871.

1 *Bixby*, 4 Cal.3d at 138 (quoting *Drummey v. State Bd. of Funeral Directors*, 13
2 Cal.2d 75, 85 (1939)).

3 The Board’s duty was to evaluate whether the Project complied with CEQA
4 and local laws, including the LUDC and CZO, and make findings regarding the
5 relevant provisions implicated by the Project. The Project, as modified, mitigated
6 all potential adverse impacts, except for one, to “*less than significant*” levels. And
7 the one unavoidable, significant risk—oil spills—was “*mitigated to the maximum*
8 *extent feasible.*” *See generally* 37-AR-014584-90. Nothing more is required by
9 County law or policy, and following the detailed analysis and recommendations of
10 its expert Staff, the Board could and should have approved the Project.

11 Disregarding its duty and Staff’s findings, the Board instead relied heavily on
12 speculative public comments and inapt evidence presented by Intervenors to justify
13 their shared aims of banning oil and wholly replacing it with alternative energy
14 sources. The Board attempted to justify this by claiming that it was unable to make
15 two of the required findings:

- 16 • Streets and highways will be/are adequate and properly designed to carry
17 the type and quantity of traffic generated by the proposed use. LUDC §
18 35.82.080.E.1(c); CZO § 35-174.7.1(c).
- 19 • The project will not be detrimental to the comfort, convenience, general
20 welfare, health, and safety of the neighborhood and will not be
21 incompatible with the surrounding area. LUDC § 35.82.080.E.1(e); CZO
22 § 35-174.7.1 .

23 1-AR-000011-13. But the Board based its denial on *existing* driver behavior and
24 accident rates on certain portions of Highway 101 and State Route 166, thereby
25 ignoring the Staff Report and Final SEIR. *See id.* Those documents included an
26 abundance of evidence that addressed these concerns, which the Board either failed
27 to consider or dismissed out of hand. In doing so, the Board abused its discretion.
28 *See City of Carmel-By-The-Sea v. Monterey Cty. Bd. of Supervisors*, 71 Cal.App.3d

1 84, 94 (1977) (“While an EIR does not require a public agency to act in any
2 particular manner, it constitutes evidence which must be considered by the public
3 agency along with other evidence which may be presented to the agency.”).

4 The Board also asserted that it could not make findings in support of the
5 Statement of Overriding Considerations because there was not substantial evidence
6 that the Project’s benefits outweighed the significant impacts on the environment.
7 1-AR-000010–11. But the Board’s own conclusory, speculative rationales for
8 rejecting the identified benefits demonstrate that it did not adequately weigh the
9 evidence provided by Staff and ExxonMobil on these issues.

10 Where, as here, a fundamental vested right exists, the Court must exercise its
11 independent judgment in reviewing the record to assess whether the findings are
12 supported by the weight of the evidence. Cal. Civ. Proc. Code § 1094.5(c); *Bixby*,
13 4 Cal.3d at 144 (“...the courts have held the loss of [a fundamental, vested right] is
14 sufficiently vital to the individual to compel a full and independent review. The
15 abrogation of the right is too important to the individual to relegate it to exclusive
16 administrative extinction.”). As demonstrated below, the Board’s findings are not
17 supported by substantial evidence, let alone the weight of the evidence in the
18 record. The Court should order that the Denial be set aside and that the Board
19 reconsider the Project consistent with the Court’s findings, all requirements of
20 CEQA, and all other applicable state and local policies, laws, ordinances, and
21 regulations.

22 **A. The Streets and Highways Are Adequate and Properly Designed to
23 Carry the Type and Quantity of Traffic Generated by the Project.**

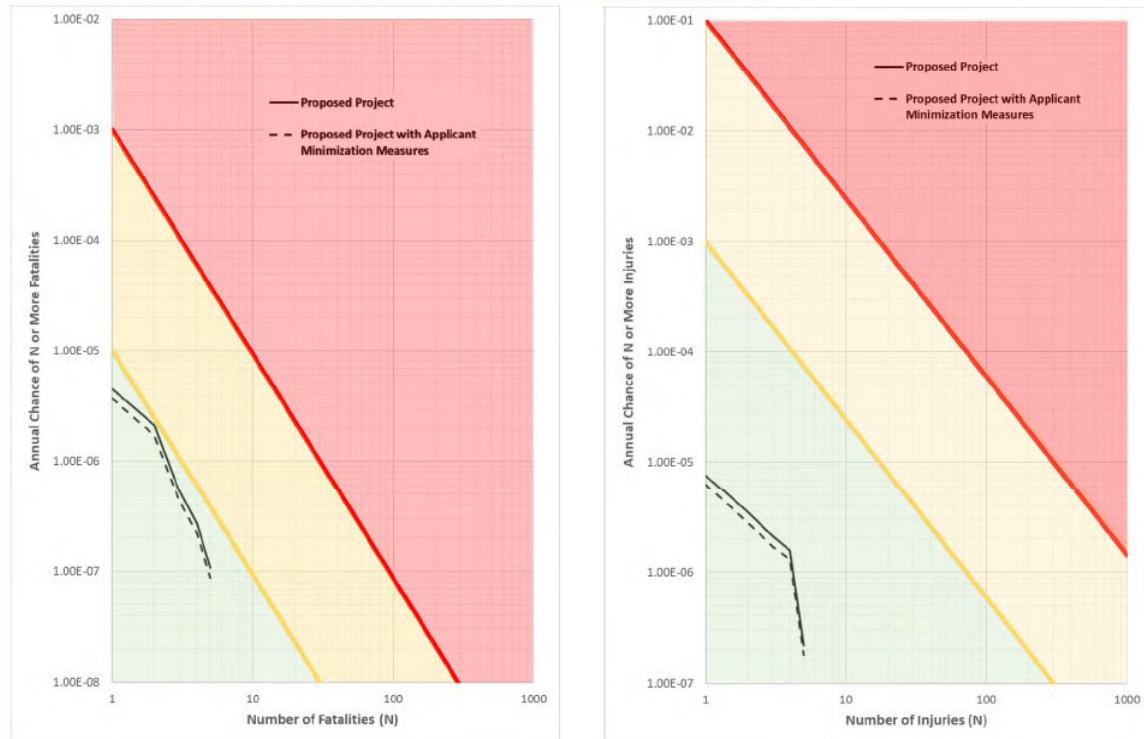
24 The evidence in the Staff Report and Final SEIR demonstrates that the
25 County’s streets and highways can accommodate the additional traffic the Project
26 would generate. 37-AR-014641–42, 014645–46; 38-AR-015087–126. Even after
27 SMPS’s closure, the Project would add only about nine truck trips per day, which
28 Staff found “would be *less than one truck per hour.*” 38-AR-015121, 37-AR-

1 014589–90. And the Final SEIR found that the Project’s impact on traffic and
2 truck accidents would be “less than significant”:

3 **The proposed Project’s contribution to cumulative traffic impacts**
4 **along State Route 166 would be less than significant.** ... [And that]
5 **cumulative oil truck accidents along State Route 166 would be less**
6 **than significant.** Implementation of the Applicant-proposed
7 avoidance and minimization measures, as well as mitigation measure
RISK-2 **would reduce the likelihood of an accident by about 33%,**
and would further reduce the Project’s contribution to cumulative
safety risk along State Route 166.

8 38-AR-015122 (emphasis added); *see also* 38-AR-015018–20; 37-AR-014587.
9 Similarly, the traffic analysis prepared by the County’s traffic consultant and the
10 opinion of the California Department of Transportation (“Caltrans”)—the
11 department tasked to ensure safety of the state’s roads and highways—all
12 demonstrate that the Project would not exceed any safety or capacity thresholds.
13 38-AR-015090–126; 40-AR-017639–75. This includes the risks of accidents
14 resulting in fatalities or injuries.

15 **Figure 4.3-13 Risk Profiles for Crude Oil Transportation from LFC to the Pentland Terminal**



1 37-AR-015020, 015010–13.

2 The Board summarily reached the opposite conclusion. Without identifying
3 any issues specific to the Project—beyond that it would add trucks to the roads—
4 the Board found that it could not approve the Project in light of behavior of other
5 drivers, accident rates, and past oil tanker accidents, none which involved
6 ExxonMobil. 1-AR-000012; *see also* Bd. Mot. at 11–16; Intvs. Mot. at 11–13. In
7 so finding, the Board abused its discretion, ignoring the relevant evidence it
8 received and was required to consider in analyzing whether the Project, including
9 its mitigation measures and compliance with the relevant codes and ordinances.
10 *Carmel*, 71 Cal.App.3d at 94.

11 The Final SEIR discussed the rate of accidents on State Route 166 between
12 the Highway 101 interchange and the State Route 33 South Junction, which were
13 found to be “slightly higher” than the statewide average. 38-AR-015122. Caltrans
14 data showed that 175 accidents on Route 166 within three years would be
15 considered statistically significant. *Id.* The actual number of accidents along that
16 route in the last three years observed was 167. *Id.* Because the expected number of
17 potentially additional accidents related to ExxonMobil’s Project was estimated to
18 be 4.35 accidents over three years—bringing the total number of accidents to
19 171.35—Staff concluded that Project’s cumulative effect on accidents along State
20 Route 166 would be less than significant. *Id.*

21 The Final SEIR collected baseline traffic volumes along the proposed routes
22 from numerous sources, including Caltrans, and assessed peak hours of travel and
23 collision data. 38-AR-015090–97, 015108–10. Two Class II risks were identified
24 related to transportation and circulation:

25 1. Operational traffic trips could increase the volume to capacity (V/C) ratio
26 or [level of service] for relevant roadway segments and intersections; and
27 2. Project-related trucks could create a traffic safety hazard.

28 38-AR-015103, 015107. The Project’s mitigation measures reduced these Class II

1 risks to “less than significant” levels. To address concerns about increased truck
2 traffic at two key intersections on the proposed route, Mitigation Measure TR-1
3 restricted ExxonMobil from trucking on the Highway 101 Northbound Ramp/State
4 Route 166 intersection during morning peak hours, 5:30-6:30 a.m., and on the
5 Highway 101 Southbound Ramp/State Route 166 intersection between 4:00-5:00
6 p.m. 38-AR-015106.

7 Regarding traffic safety, the Final SEIR focused on potential safety concerns
8 to pedestrians, bicyclists, and school children of trucks traveling along Calle Real
9 between LFC and Refugio Road due to the lack of road shoulders. A viewpoint
10 analysis was prepared along various points of Calle Real to assess a truck driver’s
11 viewing distance and ability to see pedestrians and bicyclists. 38-AR-015112. The
12 analysis considered trucks traveling at speeds between 30-55 miles per hour and
13 determined that trucks travelling at 55 miles per hour could create significant safety
14 concerns for this public traffic if not mitigated. *Id.* Thus, Mitigation Measure TR-3
15 required that trucks traveling on Calle Real drive a maximum of 35 miles per hour,
16 or 30 miles per hour in rain. 38-AR-015113. Mitigation Measure TR-2 restricted
17 the use of Calle Real by ExxonMobil’s trucks during peak school bussing hours,
18 7:45-8:30 a.m. and 2:55-3:40 p.m. *Id.* ExxonMobil would also trim vegetation
19 along Calle Real to help improve visibility for all drivers. 38-AR-015056.

20 The Board asserts that the Court should accept its decision because its
21 analysis “went beyond Staff’s assessment that the Modified Project did not require
22 that physical improvement be made to the streets and highways that the tanker
23 trucks would use.”¹⁰ Bd. Mot. at 14. Not so. The Final SEIR and Staff Report
24 analyzed the *same* accident evidence the Board relied on, as well as extensive
25 traffic and safety data and the various mitigation measures. Both found the
26 proposed mitigation measures reduced the two Class II transportation and

27 ¹⁰ The descriptions of the “streets and highways” in the preceding paragraphs of the
28 Board’s brief are supported by a citation to the Final SEIR, which shows that the
“details” in fact were part of Staff’s analysis. See Bd. Mot. at 12–14.

1 circulation risks to “less than significant.” 37-AR-014634–35.

2 **B. The Project Will Not Be Detrimental to the Comfort, Convenience,**
3 **General Welfare, Health, and Safety of the Neighborhood and Will**
4 **Not Be Incompatible with the Surrounding Area.**

5 The evidence in the Staff Report and Final SEIR also demonstrates that the
6 Project would not be detrimental to the Santa Barbara community or incompatible
7 with the surrounding area. Both reports found that the Project was “consistent” or
8 “in compliance” with all applicable County plans and policies. 37-AR-014595–
9 627; 38-AR-015060–85. As to the findings required by LUDC Section
10 35.82.080.E.1(e) and CZO Section 35-174.7.1(e), Staff recommended that the
11 Board find “that the proposed construction and operation of the project will not be
12 detrimental to the health, safety, and general welfare of the neighborhood and will
13 not be incompatible with the surrounding area.” 37-AR-014643. The Board, again,
14 rejected this proposed finding based on the behavior of other drivers, accident rates,
15 and past oil tanker accidents that did *not* involve ExxonMobil. 1-AR-000012–13.
16 That evidence was not specific to the Project and is not a valid basis for denial. *See*
17 *Goat Hill Tavern*, 6 Cal.App.4th at 1531 (upholding reversal of permit renewal
18 because “[t]here was no showing to distinguish complaints about Goat Hill Tavern
from other possible causes . . . and the homeless who frequent the area.”).

19 As discussed above, the record evidence shows that the risk that a Project
20 truck would be involved in an accident is “less than significant.” *See supra* § II.A.
21 And, as the Board’s and Intervenors’ evidence shows, there are already a number of
22 trucks transporting oil on the impacted roads. So for the purposes of evaluating the
23 Project, the question should not be “when, such accidents and an oil spill will
24 occur” (Bd. Mot. at 17) but *if* trucks carrying SYU oil materially contribute to this
25 existing risk. The evidence shows that while trucking oil has significant risks that
26 cannot be fully mitigated (38-AR-015032), the probability that the Project will
27 increase these risks is low. 38-AR-015022.

28 To evaluate risks posed by the Project, the Court should consider the

1 Project's mitigation measures—measures that the Board ignored. Because the risk
2 of an oil spill is, by definition, an identified Class I risk of the Project, ExxonMobil
3 and Staff worked closely to refine the Project to mitigate that risk to the maximum
4 extent feasible. The measures were extensive.

5 ***The Truck Hazard Mitigation Plan (Mitigation Measure RISK-1)*** sought to
6 address truck operation safety to minimize the potential for an accident and spill.
7 38-AR-015028. Under this plan, ExxonMobil agreed to implement various
8 requirements that would ensure the drivers and the trucks themselves were safe,
9 including requiring that:

- 10 • All drivers would have at least two years of experience driving hazardous
11 materials and undergo extensive training covering defensive driving,
12 emergency response, trucking routes, loading and transportation
13 procedures, local traffic concerns and hazards, driver safety, and driver
14 courtesy. *Id.*
- 15 • All trucks would be from 2017 or newer and be equipped with speed
16 monitoring and limiting systems, roll stability control systems, electronic
17 driver vehicle inspection report systems, and dual-sided dashboard
18 cameras. 38-AR-015028–29.
- 19 • ExxonMobil would use an integrated satellite system to track and map
20 locations, speeds, and other parameters and measure compliance with
21 speed limits, acceleration, and deceleration for trucks in specific areas
22 and/or at specific times of day. 38-AR-015028.
- 23 • Every truck would go through a safety and operability inspection,
24 following state and federal truck standards, before being loaded and
25 departing from LFC, with any truck that receives an unsatisfactory
26 inspection losing permission to transport crude oil from LFC until the
27 issue has been corrected. 38-AR-015029.

28 Collectively, these measures would help ensure even safer conditions along the

1 proposed roads for both the truck drivers and public commuters, mitigating against
2 the likely causes of accidents that the Board and Intervenors identify. For instance,
3 the requirement that drivers undergo extensive training covering defensive driving
4 and knowledge of the trucking routes addresses the concerns about aggressive
5 drivers and road conditions, including blind portions of the highway. *See* Bd. Mot.
6 at 14; Intvs. Mot. at 11–12. The use of recently manufactured trucks—with
7 sophisticated features such as roll stability control systems and dual-sided
8 dashboard cameras—similarly helps to ensure that potential accidents caused by
9 reckless drivers can be minimized, if not prevented.

10 ExxonMobil also agreed to modify the Project to prohibit trucking when at
11 least 1/2-inch of rain was forecasted over a 24-hour period. 37-AR-014877. This
12 would help to protect sensitive biological, cultural, and water resources from oil
13 runoff through drainage and stormwater systems during periods of heavy rain, and
14 it might also further reduce the likelihood of accidents.¹¹

15 In addition to the Truck Hazard Mitigation Plan and rain restrictions,
16 ExxonMobil also agreed to adopt measures to respond to any oil spills involving a
17 truck utilized for the Project:

18 • ***SYU Emergency Response Plans (Mitigation Measure RISK-2):***

19 ExxonMobil would update its onshore and offshore facility emergency
20 response plans to add truck loading and operations, as well as improve the
21 response plans for oil spills at the facilities. 38-AR-015029.

22 • ***Trucking Company Financial Responsibility (Mitigation Measure***

23 ***RISK-3):*** All trucking companies selected for the Project would be
24 capable of covering at least \$5 million for the cost of an oil-spill cleanup.
25 38-AR-015030.

26 • ***Oil Spill Contingency Plan (Mitigation Measure RISK-4):*** All trucking

27 ¹¹ ExxonMobil also agreed to only truck to SMPS while that refinery remained
28 open. 37-AR-014592, 014878. However, the Board’s delay of the Project
effectively moots this condition because SMPS is scheduled to close this year.

1 companies for the Project would be required to develop a contingency
2 plan related to the routes that would: (1) include contact information for
3 the various state and county departments to call in the event of a spill; (2)
4 describe measures to reduce or mitigate the potential of an accident, such
5 as procedures for inspecting and maintaining the trucks; (3) document
6 training to be provided to all trucking company personnel, including on
7 oil-spill emergency responses; and (4) conduct annual exercises covering
8 how to make notifications about a spill and discussing the approach to a
9 spill and the management team's roles and responsibilities. 38-AR-
10 015030-31.

11 • ***Funding Response Equipment for the County Fire Department***
12 ***(Mitigation Measure RISKS 5-6):*** ExxonMobil would pay up to \$25,000
13 for an oil-response trailer and up to \$8,000 for an unmanned aerial vehicle
14 for the County Fire Department to use in the event of a spill. 38-AR-
15 015032.

16 As required by County law, these measures mitigated the risk of oil spills to the
17 maximum extent feasible, lowering the probability of a spill of five gallons or more
18 to *one every 17 years* for trucks going to Pentland.¹² 38-AR-015022.

19 **C. The Project's Benefits Outweigh Its Risks.**

20 As Staff found, the Project would produce numerous benefits that more than
21 make up for the mitigated risk of oil spills. That is why Staff concluded that the
22 Project warranted approval and prepared a Statement of Overriding Considerations
23 that the Board would ultimately need to adopt to approve the Project. Ample
24 evidence exists in the record to support that finding.¹³

25
26 ¹² Five gallons or more is the Federal reporting minimum. 37-AR-014585.

27 ¹³ Oddly, the Board's Denial began with a discussion rejecting the Staff's proposed
28 Statement of Overriding Considerations despite that its findings rendered that
CEQA exercise gratuitous.

1 **Locally produced and supplied oil with a lower carbon intensity.** Even
2 though ExxonMobil’s Project was designed as a phased restart that would enable
3 SYU to produce up to 39% of its baseline capacity, the Project would transport
4 approximately four million barrels of oil production per year. 37-AR-014858. This
5 amount of oil could produce 78 million gallons of gasoline and an additional 58
6 million gallons of diesel, with the rest available for use to manufacture lubricants
7 and asphalt. 37-AR-014337; 38-AR-014963.

8 Staff found that over 70% of the oil coming to California to meet the state’s
9 needs was from outside the state and primarily being delivered via tanker ships,
10 which emit large amounts of greenhouse gas emissions as a result of the distances
11 traveled. 37-AR-014637. The Final SEIR showed that California has become
12 increasingly reliant on foreign crude oil, with 57.5% of the state’s supply coming
13 from foreign sources in 2017—up from 25.7% in 2000. 38-AR-014963. And in
14 2019, those statistics increased further, with 58% of the oil supplied to California
15 refineries coming from foreign sources. 37-AR-014637. Because U.S. oil
16 production is subject to more stringent environmental standards, the oil produced at
17 SYU has a lower carbon intensity than foreign-produced oil and would result in
18 lower greenhouse gas emissions, which is a benefit felt globally. 37-AR-014337,
19 014637–38; 38-AR-014910–11, 014942–43, 014963. Staff recognized that
20 ExxonMobil’s Project could help reduce the County’s reliance on foreign oil
21 consumption. 37-AR-014637–38.

22 The Board dismissed these benefits, concluding that the Project would have a
23 “de minimis impact” on local oil demand and use. 1-AR-000010. But the Board
24 should have considered how even a “modest” four million barrel contribution to the
25 state’s oil market—particularly of less carbon-intensive oil—could help support the
26 state’s energy independence. *See* 37-AR-014637.

27 //

28 //

1 The Board also determined that the Project would be “detrimental to the
2 environment generally” and that “transportation by truck is not the appropriate way
3 to transport [oil] based on the environmental and safety impacts to the County.” 1-
4 AR-000010–11. But these tendered reasons have nothing to do with this Project or
5 the ample evidence compiled by Staff and focus instead on vague environmental
6 concerns that cannot serve as the basis for the Board’s Denial. Indeed, the Board’s
7 Denial is not only improper but also hypocritical: by denying the Project in the
8 name of protecting the environment, the Board actually promotes environmental
9 degradation, depriving the community of oil that is cleaner than that produced by
10 foreign sources. Again, the Project would cumulatively add only nine truck trips
11 per day, and the likelihood of an accident and oil spill along the proposed trucking
12 route to Pentland was one in 17 years. Even in the unlikely event of a spill, it
13 would be even more unlikely that the environment would be “generally” harmed
14 given the proposed mitigation measures, some of which were specifically designed
15 to ensure that a response to a spill was dealt with in a time-sensitive and efficient
16 manner. The Board ignored all this and instead focused on global climate concerns
17 and oil-trucking issues that are not specific to the Project.

18 **Bringing back jobs and expenditures at local businesses.** Prior to SYU’s
19 shut-in, ExxonMobil spent “nearly \$34 million directly in [the] County for
20 employee wages and to local businesses for goods and services.” 1-AR-000073.
21 The Project was expected to add up to 250 employees and contractors for both
22 onshore and offshore operations, up to 30 new construction jobs, and full-time truck
23 drivers. 1-AR-000073, 000148, 000162; 37-AR-014639–40, 014861, 014884.
24 Staff anticipated that, in turn, these jobs would increase spending in the community
25 on food, recreation, education, and healthcare. 37-AR-014639. Indeed,
26 ExxonMobil submitted evidence showing that in 2014, there were over \$33 million
27 in expenditures for SYU employee salaries and benefits to County businesses and
28 local government, including over \$1.8 million spent at local restaurants and hotels

1 and on catering.” 37 AR 014338.

2 Many community members and local organizations submitted comments
3 expressing their support for the Project and explaining how increases in jobs would
4 benefit the County. For example, the Santa Barbara South Coast Chamber of
5 Commerce noted “[b]ringing well-paying jobs to [the] county has always been a top
6 priority” and restarting SYU “would allow a significant number of employees and
7 contract personnel to return to their homes, restart their lives in the community, and
8 spend local dollars in local businesses.” 1-AR-000236. Similarly, the California
9 Hispanic Chambers of Commerce—which represents over 800,000 Hispanic state
10 business owners—stated that the Project was “vital for every working family in the
11 Santa Barbara region” and that its approval would “bring back local jobs and tax
12 revenues for Santa Barbara schools and emergency services.” 1-AR-000230. And
13 SYU’s Superintendent reminded the Board that the more than 150 employees he
14 had to lay off following the pipeline rupture “aren’t just numbers” but people with
15 families, who are suffering and desire to return to work. 1-AR-000093–94.

16 The Board brushed all this aside and, instead, quibbled over the security and
17 quality of the jobs (1-AR-000010), relying on comments from the USCB
18 Environmental Affairs Board that sowed distrust of ExxonMobil. Supervisor Hart,
19 for example, discussed ExxonMobil temporarily suspending 401k matching
20 contributions and its plan to lay off 15% of its global workforce by the end of 2022.
21 1-AR-000167–68. She made these comments without explanation or evidence
22 connecting these unrelated events to the Project or the jobs and economic activity
23 the trucking Project and restarting SYU will bring to the County.

24 Similarly, and again without providing any factual basis, the Board
25 concluded that the economic benefits of the Project would be “substantially less”
26 than those of the County’s hospitality industry, which is purportedly threatened by
27 the *status quo* “possibility of oil spills.” 1-AR-000011. This unfounded finding
28 ignores the fact that the Project creates jobs, and those workers could become

1 patrons of that industry. In any event, evidence shows that the Project poses a low
2 risk of oil spills along the proposed routes, a majority of which are nowhere near
3 the tourist attractions of the Santa Barbara coastline.

4 **Increasing funding to the County through additional tax revenue and**
5 **coastal mitigation funds.** When SYU was fully operational, ExxonMobil
6 contributed \$4.2 million in County property taxes each year and was required to
7 contribute \$231,600 annually to the Coastal Resources Mitigation Fund (“CRMF”),
8 which funds projects that enhance affected coastal resources. 37-AR-014638-39.
9 Since the shut-in, ExxonMobil’s tax payments have decreased to between \$1
10 million and \$1.7 million annually, and its funding to CRMF fell to \$104,500 a year.
11 37-AR-014639. If ExxonMobil’s trucking Project were approved, its taxes would
12 increase by \$1.24 million each year, and CRMF would benefit from ExxonMobil’s
13 additional \$127,100 in annual funding. *Id.* The Santa Barbara County Deputy
14 Sheriffs’ Association submitted a written comment, noting that “when it comes to
15 making sure law enforcement has the resources it needs to respond, every dollar
16 counts...Restoring SYU to full production would inject millions of dollars into the
17 local economy, which will have a positive impact on public safety resources.” 1-
18 AR-000232.

19 A comment the Board received suggested that it should ignore the taxes that
20 the Project would contribute because the County receives greater taxes from the
21 Ritz Carlton Baccara Hotel, which could be impacted in the event of a spill. *See* 1-
22 AR-000167. But that impact remains *regardless* of whether ExxonMobil is
23 trucking or not, as there currently *are* other, unrelated trucks on the road
24 transporting oil and gas in the County. The Board simply turned its back on the
25 notion that “every dollar counts” and prepared Findings for Denial that are *silent*
26 about the additional tax revenue and additional CRMF funding that the County
27 would receive if the Project were approved. There is no discussion about how that
28 funding could be used or how it compares to the money flowing to the County from

1 other taxpayers.

2 The Board had more than enough evidence before it to find that the benefits
3 of the Project outweighed its risks. But it instead chose to dismiss relevant
4 information about the advantages the Project would bring to the County.

5 **III. The Board’s Findings Are Not Supported by Substantial Evidence.**

6 Even if the Court were to determine that the substantial-evidence test applies
7 rather than the independent-judgment test, the Court should set aside the Denial
8 because the Board’s findings are not supported by substantial evidence in light of
9 the whole record. Cal. Civ. Proc. Code § 1094.5(c) . “The ‘in light of the whole
10 record’ language means that the court reviewing the agency’s decision cannot just
11 isolate the evidence supporting the findings and call it a day, thereby disregarding
12 other relevant evidence in the record.” *Lucas Valley Homeowners Ass’n v. Cty. of
13 Marin*, 233 Cal.App.3d 130, 141–42 (1991). “Rather, the court must consider all
14 relevant evidence, including evidence detracting from the decision, a task which
15 involves some weighing to fairly estimate the worth of the evidence.” *Id.* at 142.

16 The evidentiary record before the Board was substantial, encompassing
17 thousands of pages of information prepared and compiled over several years by
18 Staff, hired experts, and state agencies, as well as information submitted by public
19 organizations and interested individuals. Yet the Findings for Denial show that the
20 Board paid attention only to a select subset of that information—existing driver
21 behavior and past accidents involving oil spills.

22 The Board’s finding that the streets and highways are inadequate for the
23 Project illustrates its prejudicial approach to weighing the evidence in the record.
24 The Board focused on “traffic safety along Calle Real, Highway 101, and State
25 Route 166 due to the addition of tanker truck trips to and from [LFC] to Pentland
26 Terminal.” 1-AR-000012; Bd. Mot. at 11–16; Intvs. Mot. at 10–14. The traffic
27 analysis, statewide safety thresholds, and opinion of Caltrans and transportation
28 engineers found that the Project would not exceed any safety or capacity thresholds.

1 38-AR-015090-126; 40-AR-017639-75. And the evidence showed that the
2 Project's impact on the very roads at issue would be less than significant. 38-AR-
3 015118-125; *see also* 38-AR-015018-20 (Tables 4.3-16 and Figures 4.3-12-13).
4 This evidence reflects the collective experience and expertise of the entities tasked
5 with making essential determinations about road and highway safety. Even under
6 the substantial-evidence standard, such filed expert evidence is “*entitled to great*
7 *weight.*” *Bank of Am.*, 42 Cal.App.3d at 212 (emphasis added).

8 The Denial identified no basis to cast this expert evidence aside and relied
9 instead on anecdotal evidence from non-experts—comments and information
10 presented by the public. While “local residents may testify to their *observations*
11 regarding existing traffic conditions, ‘in the absence of specific factual foundation
12 in the record, dire predictions by nonexperts *regarding the consequences of a*
13 *project do not constitute substantial evidence.”*” *Banker’s Hill, Hillcrest, Park Wt.*
14 *Cmtys. Pres. Grp. v. City of San Diego*, 139 Cal.App.4th 249, 274 (2006) (citing
15 *Gentry v. City of Murrieta*, 36 Cal.App.4th 1359, 1417, *as modified on denial of*
16 *reh’g* (Aug. 17, 1995)). Opponents of a project must provide evidence that it “*will*
17 *produce a particular adverse effect.*” *Id.* (citing *Ass’n for Prot. etc. Values v. City*
18 *of Ukiah*, 2 Cal.App.4th 720, 736 (1991)). Here, the evidence cited by the Board
19 and Intervenors in support of the Board’s findings (Bd. Mot. at 14–16; Intvs. Mot.
20 at 11–14), while voluminous, falls well short of this standard and cannot overcome
21 the convincing expert evidence in favor of approving the Project.

22 The evidence about the risk of accidents resulting in oil spills is equally
23 flawed and likewise cannot be considered substantial in this context. The record
24 shows only that oil trucking accidents have happened in the past and may happen in
25 the future. It does not show that the Project will materially contribute to or increase
26 this risk, and it ignores that any method of oil transportation—via pipeline, marine
27 barge, railway, or truck—inevitably comes with the risk of a spill. While Santa
28 Barbara County prefers transportation via pipeline, the reality is that no pipeline is

1 currently available and “most of the producers in the county truck their oil to
2 market.” 1-AR-000152. And the County’s own plan, policy, and local laws
3 contemplate that transporting oil via trucks may be necessary in certain situations
4 and permit trucking where—as here—adverse impacts are “mitigated to the
5 maximum extent feasible.” LUDC Section 35.52.060.B.10.b; CZO Section 35-
6 154.5(i). There is no dispute that the Project’s proposed mitigation measures did
7 so. The Board’s Finding for Denial needed to “bridge the analytic gap between the
8 raw evidence and the ultimate decision” to deny the Project. *Topanga Ass ’n for a*
9 *Scenic Cmty. v. Cty. of Los Angeles*, 11 Cal.3d 506, 515 (1974). It did not.

10 The Board relied primarily on the history of accidents along State Route 166,
11 noting the dangers presented by *other drivers* and examples of vehicles trying to
12 pass others on two-lane roads. 1-AR-000012; Bd. Mot. at 14; Intvs. Mot. at 11.
13 But the record has little detail about these past accidents, making it impossible for
14 the Board to compare them to any potential accidents that could occur in spite of
15 the Project’s numerous and extensive mitigation measures (*see supra* § II.A–B).
16 For instance, the September 27, 2021 letter submitted by the EDC refers to several
17 accidents that occurred along the proposed routes, but provides no information
18 about how fast the vehicles were driving, the experience of the truck driver, or the
19 physical status of the truck. 57-AR-025303–05, 025309–12. These facts are all
20 relevant to the Board’s ability to properly assess the proposed mitigation measures
21 put forth in ExxonMobil’s Project. The Board failed to explain how the cumulative
22 addition of nine trucks a day would substantially increase the risk of accidents
23 resulting in oil spills. If anything, the evidence shows that the Project’s mitigation
24 measures make it *safer* than other oil trucking in the County. *See supra* § II.B.
25 And, discussed above in Section II.C, while the record includes substantial
26 evidence supporting Staff’s original Statement of Overriding Considerations, the
27 Board dismissed those benefits based on conjecture, false equivalencies, and
28 matters outside the purview of their review like the Projects purported impact on

1 the “environment generally,” individual preferences for renewable energy, and the
2 desire to send a “clear message” to ExxonMobil. *See also supra* SOF § D.

3 **IV. The Board’s Decision Is Inconsistent with County Policy and Law, and
4 It Constitutes an Ultra Vires *De Facto* Ban on Trucking Oil.**

5 Recognizing that the industry must have a way of getting its products to
6 market, Santa Barbara policy, land use plan, and local laws consistently provide for
7 the possibility of transporting oil by means other than pipeline. Again, the
8 County’s Coastal Land Use Plan provides that the County “*should assure* that
9 producers have access to competitive markets....” RJN Ex. A at 67 (emphasis
10 added); *see also id.* at 70. And CZO Section 35-154.5(i) allows for exceptions to
11 the County’s pipeline preference in specific circumstances:

12 Transportation by a mode other than pipeline may be permitted only:
13 1) Within the limits of the permitted capacity of the alternative mode;
14 and 2) **When the environmental impacts of the alternative
transportation mode are required to be mitigated to the
maximum extent feasible;** and 3) When the **shipper has made a
commitment to the use of a pipeline when operational** to the
15 shipper’s refining center of choice; and 4) When the County has
determined use of a **pipeline is not feasible by making one** of the
16 following findings:

17 (a) **A pipeline** to the shippers’ refining center of choice has
inadequate capacity or is **unavailable within a reasonable period of
time** . . .

19 RJN Ex. B at 9-6 (emphasis added). The Project meets all of the applicable criteria.

20 Similarly, LUDC Section 35.52.060.B.10.b permits transportation by a mode
21 other than pipeline “(1) [f]or that fraction of the oil that cannot feasibly be
22 transported by pipeline; and (2) [w]hen the environmental impacts of the alternative
23 transportation mode are required to be mitigated to the maximum extent feasible.”

24 RJN Ex. C at 5-13. The Project meets those criteria, too.

25 These provisions create a balance between the industry’s need to bring its
26 products to market when a pipeline is unavailable and the County’s interest in
27 protecting health and safety. And they make sense given the importance of this
28 commodity. Staff and supporting Board members recognized that oil cannot be

1 easily replaced and is still necessary for the foreseeable future, including the up-to-
2 seven-year duration of the Project. *See, e.g.*, 37-AR-014872–74 (explaining that
3 crude oil “is different from electrical power that is generated by alternative energy
4 sources such as wind and solar and provides energy to different end-users” and
5 noting that planes, construction equipment, and heavy trucks do not currently have
6 electric equivalents); 1-AR-000164 (Supervisor Lavagnino commenting that while
7 there is a push for new green energy, the reality is “it’s not there yet...we have to
8 continue to produce fossil fuels as we transition.”).

9 The Board’s actions here impermissibly rewrote *sub silentio* the County
10 policy and law to eliminate the possibility of trucking crude oil, thereby disrupting
11 this careful balance. Indeed, the County could only deny the Project by rewriting
12 the rules because, as Staff found, the Project complied with every element of CZO
13 35-154.5(i) : (1) trucking would be limited to the permitted capacity of 24,820-
14 25,550 round-trip truck trips per year; (2) all Class Risks (I-III) would be mitigated
15 as a result of ExxonMobil’s agreement to accept the proposed mitigation measures;
16 (3) ExxonMobil had requested that the trucking permit be limited to seven years or
17 the restart of pipeline operations, whichever was sooner; and (4) even if the
18 replacement pipeline was approved, it would likely not be available for four to
19 seven years and there is no other pipeline available to transport ExxonMobil’s
20 crude oil from LFC. 37-AR-014622–27; *see also* 37-AR-014588, 014615–16,
21 014648–51; 38-AR-015064–66. For the same reasons, the Project met both criteria
22 for LUDC Section 35.52.060.B.10.b. 37-AR-014616, 014619–20; *see also* 37-AR-
23 014588, 014615–16, 014648–49; 38-AR-015067–68.

24 The statements made by the opposing members of the Board show that their
25 votes were improperly influenced by their policy motivations to push the oil
26 industry out of Santa Barbara County. Where an administrative body’s decision is
27 alleged to be politically motivated, courts may inquire into whether the hearing
28 process was fair and whether that body abused its discretion. *See Jones v. City of*

1 *Orange Cove*, 454 F.App’x 601, 603 (9th Cir. 2011) (considering whether the writ
2 “allege[d] that the City Council’s decision was politically motivated, reasonably
3 prompting an inquiry into whether plaintiff’s trial was fair and whether the City
4 Council abused its discretion”); *Harrington v. City of Davis*, 16 Cal.App.5th 420
5 (Ct. App. 2017) (finding that plaintiff failed to demonstrate that the city bent to
6 political pressure when approving a conditional use permit and indicating that such
7 evidence would have been relevant to the question of abuse of discretion). The
8 Board abused its discretion here by elevating its political concerns over its duty to
9 make a decision on this single permit application.

10 For example, Supervisor Hart stated that “[w]e must reduce our dependence
11 on fossil fuels to achieve true energy independence.... I believe that our community
12 wants to send a clear message that we are unwilling to risk damage to our
13 environment in exchange for short-term corporate profits, uncertain local jobs, and
14 modest tax revenue.” 1-AR-000170-71. Vice Chair Williams expressed similar
15 sentiments, suggesting—contrary to long-standing County policy—that the County
16 has a *de facto* ban on transporting oil by truck: “transportation by truck is not the
17 appropriate way to transport it.” 1-AR-000158. And Chair Hartmann emphasized
18 her desire to transition to renewable energy, saying that approving the trucking
19 permit is not “really the direction to go when we are facing a climate crisis[.]” 1-
20 AR-000182.

21 These statements show that the opposing members of the Board used
22 ExxonMobil’s application as a means of prohibiting oil production and additional
23 oil transportation in the County. But the Board lacks the authority to do so. Its
24 duty was to assess ExxonMobil’s application under the relevant policies, plans,
25 codes, and ordinances. Instead, it chose to legislate under the table, impose its own
26 will, and ignore existing County policies—an abuse of its discretion.

27 In *Gabric v. City of Rancho Palos Verdes*, the Court of Appeal found the
28 City Council abused its discretion when it “confused legislative authority with

1 administrative duty” and proceeded in a manner inconsistent with the law. 73
2 Cal.App.3d 183, 192 (Ct. App. 1977). There, the City denied the appellant’s
3 building permit relying on an interim zoning ordinance, *not yet adopted* in the
4 general master plan at the time petitioner’s application was submitted. *Id.* at 188–
5 89. The Court of Appeal found that the City’s denial had nothing to do with the
6 permit’s failure to meet the zoning or building requirements or comply with the
7 law, but was instead based on the City’s “contemplating the future adoption of a
8 new zoning ordinance.” *Id.* at 190. The City’s decision to deny the permit was
9 “erroneously based on its authority to ordain laws, rather than adjudicate and order
10 an environmental impact statement, or to find that such a statement was properly
11 determined unnecessary.” *Id.* at 192. The Board’s denial here is no different—it
12 was a procedural failure focused not on the question of whether ExxonMobil met
13 the requirements for its trucking permit, but instead on an improper motivation to
14 *change* the laws and oust oil from the community.

15 The Board exceeded its authority and expressed its interest in putting a
16 referendum on oil production, transport, and use in the County in an effort to appeal
17 to concerns raised by local residents. Supervisor Nelson, one of the Board
18 members in favor of the Project, indicated as much, asking for clarity from his
19 colleagues:

20 [T]his project has this significant unavoidable impact [and] all oil
21 projects are gonna have that. **Is there any project that we, as a**
county, can accept that can mitigate that? Because I think that’s a
22 decision we need to be clear on. **Because if this project can’t do it,**
and future projects can’t do it, we really should just be honest with
23 **our process here....** [W]e should be honest with applicants and the
public on what we’re doing.

24 1-AR-000172 (emphasis added).

25 The administrative record warranted the Project’s approval. But the majority
26 of the Board chose instead to use ExxonMobil’s application as an opportunity to
27 “send a clear message” that the County is looking towards a future in which the oil
28 industry no longer operates within its borders. The Court should set aside the

1 Denial and order the Board to reconsider the Project in light of this opinion, all
2 requirements of CEQA, and all other applicable state and local policies, laws,
3 ordinances, and regulations.

4 **CONCLUSION**

5 For the foregoing reasons, ExxonMobil respectfully requests that this Court
6 grant summary judgment on its First Cause of Action for Petition for Writ of
7 Administrative Mandate, set aside the denial of ExxonMobil's trucking Project, and
8 order the Board to reconsider the Project in light of the Court's opinion and
9 judgment, all requirements of CEQA, and all other applicable state and local
10 policies, plans, laws, codes, ordinances, and regulations.

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Dated: March 30, 2023

Respectfully submitted,

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By: /s/ Dawn Sestito
Dawn Sestito

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Attorneys for Petitioner and Plaintiff
Exxon Mobil Corporation

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Petitioner/Plaintiff Exxon Mobil Corporation, certifies that this brief complies with the Court's March 3, 2023 Order (Dkt No. 42), granting ExxonMobil up to 12,000 words or 40 pages for its Cross-Motion and Opposition to Respondent/Defendant's and Intervenors' Motions for Summary Judgment.

Dated: March 30, 2023

By: /s/ Dawn Sestito
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